

STATE OF ARKANSAS
ASSESSMENT COORDINATION DEPARTMENT

CASE NUMBER: 05 - 004.

IN THE MATTER OF
BAXTER COUNTY
ADMINISTRATIVE LAW HEARING
December 19, 2005

DECISION

On December 19, 2005 this cause came on for hearing before the Director of the Assessment Coordination Department (ACD) pursuant to Arkansas Code Annotated (ACA) 25-15-208, the Arkansas Administrative Procedures Act.

Appearing for Baxter County were their Attorneys, Mr. Ronald Kincade and Mr. Kern Treat, and witnesses County Judge Dan Hall and County Assessor Elaine Quick. Appearing for the Assessment Coordination Department was their General Counsel Bob Leslie, and witness Deputy Director Page Kutait.

The hearing was requested by Baxter County as a result of a determination by the ACD not to grant the request of Baxter County to reimburse the County for a payment it made on September 23, 2005 to its reappraisal contractor, Equity Valuations Inc., in the amount of \$20,418.00.

The Director finds that one of the purposes of the provision contained in ACA 25-15-208 allowing for an aggrieved party to request a hearing before the Director is to provide an opportunity for that aggrieved party to present to the Director, face to face, the merits of their position in a cogent and orderly way. Conversely such a hearing allows the agency involved the opportunity to take another look at their position in light of the facts and arguments presented by the aggrieved party and affirm, modify, or reverse their position in order to achieve a just and equitable result.

In the case at hand, the Director is impressed with the candid and sincere testimony of the Assessor Elaine Quick. The Director believes that the Assessor acted in good faith based on her understanding of the law, including the rules and regulations of the ACD and there was no intent to circumvent any provision of such laws.

Ms. Quick testified that she knew that the failing of the Ratio Study was a very serious event and that this meant that the ACD had determined that the reappraisal job in Baxter County was seriously flawed. She further testified that even though she received the September progress report and bill from Equity Valuations Inc. in the amount of \$20,418.00 after she had been notified by the ACD that the County had failed its Ratio Study she believed she was required by the contract to make the September payment as billed. She believed that if she was not supposed to make the payment the ACD would have told her they would not reimburse the County for the payment.

This is a case of first impression for the Department. Mr. Kutait testified that, to his knowledge, the ACD had never had a situation where the County had made a payment to a contractor after the ACD had notified the County that they had failed their Ratio Study. While it is true that the Appraisal Fund statute, ACA 26-26-1901(c)(1), provides that "The fund proceeds shall be distributed monthly, except when there is a determination by the Assessment Coordination Department that proper reappraisal procedures established by the department are not being followed", the standard Failed Ratio letter does not contain any words to the effect that the county is therefore out of compliance with the rules and regulations of the department and funds will be withheld and accordingly the letter in this particular case did not contain such a notice. Granted the law does not specifically require such a notice but as pointed out by Counsel for Baxter County, the Ratio Study statute ACA 26-26-304 does not contain a provision that if the County fails the Ratio reimbursement funds will be withheld.

To arrive at the conclusion that the ACD might withhold reimbursement funds immediately upon the County failing the Ratio Study, the Assessor would have had to interpret two different statutes and combine the results. While this is

within the capabilities of the ACD, it is too much to expect of a lone Assessor without the benefit of specific notice contained within the Failed Ratio letter.

In addition, Baxter County has cooperated fully in taking the steps necessary to correct the deficiencies in the reappraisal. Also, of their own volition, they have required the new contractor to be bonded, making sure that the County will be protected should the new Contractor default as the previous one did.

Consequently it is the decision of the Director that the original determination of the ACD should not be affirmed and the September reimbursement payment to Baxter County in the amount of \$20,418.00 should be and it is hereby released.

The standard ACD Failed Ratio letter shall be reformatted to contain the appropriate notice.

Our thanks to Baxter County for their patience as well as persistence and their utilization of the Administrative Law Hearing procedure to bring about a just and equitable result.

ACD DIRECTOR

DATE